

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

TRUSTEES OF THE HEATING, PIPING)
AND REFRIGERATION PENSION FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

TRUSTEES OF THE HEATING, PIPING)
AND REFRIGERATION MEDICAL FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

TRUSTEES OF THE HEATING, PIPING)
AND REFRIGERATION TRAINING FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

M. EDDIE MOORE SCHOLARSHIP)
TRUST FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

C O M P L A I N T

TRUSTEES OF THE INDUSTRY PROMOTION)
FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

TRUSTEES OF THE LOCAL 602)
COMMUNICATIONS AND PRODUCTIVITY)
FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

TRUSTEES OF THE STEAMFITTERS)
LOCAL 602 RETIREMENT SAVINGS FUND)
9411 Philadelphia Road, Suite S)
Baltimore, MD 21237,)

TRUSTEES OF THE INTERNATIONAL)
TRAINING FUND,)
103 Oronoco Street)
Alexandria, Virginia 22314,)

Plaintiffs,)

v.)
)
)
CAPITOL BALANCING LLC)
3615 Southriver Terrace)
Edgewater, Maryland 21037)
)
Serve: Resident Agent)
Robert Pierpont)
3615 Southriver Terrace)
Edgewater, Maryland 21037,)
)
Defendant.)
_____)

COMPLAINT

(TO COMPEL A PAYROLL AUDIT)

PARTIES

1. The Heating, Piping and Refrigeration Pension Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and (37) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1002(3) and (37). The Pension Fund was established and is maintained according to the provisions of its Restated Agreement and Declaration of Trust. The Pension Fund is administered at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237. The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

2. The Heating, Piping and Refrigeration Medical Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and (37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The Medical Fund was established and is maintained according to the provisions of its

Restated Agreement and Declaration of Trust. The Medical Fund is administered at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237. The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

3. The Heating, Piping and Refrigeration Training Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and (37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The Training Fund was established and is maintained according to the provisions of its Restated Agreement and Declaration of Trust. The Training Fund is administered at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237. The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

4. The Steamfitters Local 602 Retirement Savings Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and (37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The Retirement Savings Fund was established and is maintained according to the provisions of its Restated Agreement and Declaration of Trust. The Retirement Savings Fund is administered at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237. The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

5. The International Training Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and 3(37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The International Training Fund was established and is maintained by a Restated Trust Agreement. The International Training Fund is administered at 103 Oronoco Street, Alexandria, Virginia 22314.

The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

6. The M. Eddie Moore Scholarship Trust Fund is a multiemployer employee benefit plan as those terms are defined in Sections 3(3) and (37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The M. Eddie Moore Scholarship Trust Fund was established and is maintained according to the provisions of its Restated Agreement and Declaration of Trust. The M. Eddie Moore Scholarship Trust Fund is administered at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237. The Trustees are the designated fiduciaries as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

7. The Industry Promotion Fund is a trust fund established and maintained according to the provisions of its Trust Document. The Industry Fund is administered by its Trustees at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237.

8. The Local 602 Communications and Productivity Fund is a labor-management cooperation committee as provided for in Section 302(c)(9) of the Taft-Hartley Act, 29 U.S.C. § 186(c)(9), and Section 6 of the Labor-Management Cooperation Act of 1978, 29 U.S.C. § 175a. The Communications Fund is established and maintained according to the provisions of its Restated Agreement and Declaration of Trust. The Communications Fund is administered by its Trustees at 9411 Philadelphia Road, Suite S, Baltimore, Maryland 21237.

9. Capitol Balancing LLC is a Maryland business existing under Maryland State laws with an office located at 3615 Southriver Terrace, Edgewater, Maryland 21037.

10. Capitol Balancing LLC transacts business in the Maryland, Virginia and the Washington, D.C. metropolitan area as a contractor or subcontractor in the pipefitting, steamfitting and HVAC industry and at all times herein was an “employer in an industry affecting commerce” as defined in Sections 3(5), (9), (11), and (12) of ERISA, 29 U.S.C. §§ 1002(5), (9), (11), and (12); and Section 3 of the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § 1001a.

11. At all relevant times Capitol Balancing LLC was and is signatory and bound to the Agreements between the Mechanical Contractors Association of Metropolitan Washington, D.C. and Steamfitters Local Union No. 602 (“Collective Bargaining Agreement”).

12. During all relevant times herein, the Defendant employed employees performing work covered by the Collective Bargaining Agreement.

JURISDICTION

13. This Court has jurisdiction of this action under Section 502 of ERISA, 29 U.S.C. § 1132, and supplemental jurisdiction for any state law claims under 28 U.S.C. § 1367(a). This is an action to compel an audit and for equitable relief.

14. Venue is proper in this district pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e), as the district in which Plaintiffs are located and administered.

15. This Court has personal jurisdiction over the Defendant pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

COUNT I

(TO COMPEL A PAYROLL AUDIT)

15. An audit of Defendant Capitol Balancing LLC's records from January 1, 2016, to the date the audit can be completed, will permit the Plaintiffs to determine whether the Defendant is properly reporting the correct number of employees working under the Collective Bargaining Agreement, the correct number of hours worked by the employees, the correct contribution rates, and the correct amounts owed to each of the Plaintiffs.

17. The Defendant Capitol Balancing LLC has refused requests to cooperate in a payroll audit conducted on behalf of the Plaintiffs by the certified public accounting firm of Novak Francella, LLC.

18. Pursuant to the Defendant's Collective Bargaining Agreement, the Defendant is a party to and bound by the terms and conditions of the Plaintiffs' Restated Agreements and Declarations of Trust.

19. Under the terms of the Collective Bargaining Agreement and Plaintiffs' Restated Agreements and Declarations of Trust, Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), and *Central States Pension Fund v. Central Transport, Inc.*, 472 U.S. 559 (1985), the Plaintiffs are entitled to obtain and conduct an audit of Capitol Balancing LLC's payroll and related records and an employer is obligated to submit to a payroll compliance review conducted by the Plaintiffs.

WHEREFORE, the Plaintiffs pray judgment as follows:

A. For a Court Order requiring the Defendant Capitol Balancing LLC to submit all payroll books and records to the Plaintiffs, and to cooperate with the Plaintiffs' designee, the certified public accounting firm of Novak Francella LLC, to complete a payroll compliance review, at the Defendant's expense, for the period of January 1, 2016, through the date the audit can be conducted.

B. To enter judgment against the Defendant Capitol Balancing LLC in the amount of reasonable attorney's fees and costs incurred by the Plaintiffs in bringing this action.

C. For such further relief as the Court may deem appropriate.

Respectfully submitted,

Dated: April 7, 2020

By: /s/
(Signed by Jacob Szewczyk with permission)

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